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MEMOIR

OF

RUFUS CHOATE

BY

JOHN B. D. COGSWELL

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RUFUS CHOATE

In March, 1633, John, son of Governor John Winthrop, with twelve men, began a plantation at Agawam, which in 1634 was incorporated as Ipswich by the General Court of Massachusetts. Its southern portion, long known as Chebacco, was created into a separate town in 1819, by the name of Essex. Ship-building was carried on upon the principal stream at least as early as 1668, and the "Chebacco boats" were long famous. Captain Barnstable of the Ariel, in Cooper's "Pilot," hailed from "old Chebacco."

John Choate, an immigrant from England, settled in Chebacco in 1645. His son Thomas settled on Hog Island, and, being the first resident there and a large farmer, was known as Governor Choate. A man of good sense and large influence, he represented Ipswich in the General Court in 1723–27, dying March 3, 1745. His son, Colonel John Choate, was born on Hog Island in 1697, and died in 1766. Seventeen years a member of the House of Representatives, and five of the Council, Justice of the Court of Sessions and Court of Common Pleas, and Judge of Probate, he was a leading citizen of the province. Elected Speaker in 1741, he was negatived by Governor Belcher. Francis, another son of Thomas Choate, was born on Hog Island in 1701, and died there October 15, 1777. He was prominent in church and town affairs. His second son, William, was the father of David Choate, born upon

Hog Island, November 29, 1757, who died March 26, 1808. He inherited the island farm which is still owned by his descendants, but in 1800 he removed to the main land. David Choate, the father of Rufus, was, at times, a school-teacher in Ipswich. He was highly esteemed for his social talents, good sense, and judgment. He is understood to have been a member of the State Convention called to consider the Federal Constitution, and to have advocated its adoption in a series of newspaper articles, sometimes ascribed to Chief-Justice Parsons. The statement shows, at any rate, the estimation in which his abilities were held. By his first wife David Choate had no children. October 11, 1791, he married Miriam, daughter of Captain Aaron Foster, who bore him two daughters and four sons, and who survived him more than forty years, dying in 1853, at the age of eighty-one. Their son David, born November 29, 1796, died December 16, 1872. He was long engaged in school-teaching, was an active town and church officer, a member of both branches of the legislature, and distinguished for the moral and intellectual traits characteristic of his family.

One of the daughters married Dr. Thomas Sewall, who, about 1808, succeeded another eminent physician, Dr. Reuben D. Muzzey, in practice at Essex. Dr. Sewall, some years after, removed to Washington, where he attained great distinction in his profession, his house becoming the home of his famous brother-in-law, the subject of this memoir, during his various residences in that city.

Fond tradition and affectionate eulogy preserve the memory of another son, Washington Choate, who, born January 17, 1803, died February 27, 1822, whilst a member of the Junior Class in Dartmouth College. His fair beauty, his sweet disposition, his extreme precocity and remarkable attainments were accompanied, we are told, by a sincere and fervent piety, which fitted him for the lofty service to which he had already determined to con-

secrate his life. He was undoubtedly a young man of rare promise, thought by many to be in no way inferior to his brother Rufus, — who was fondly attached to him, and refused to be comforted for his loss.

Rufus, the second son and fourth child of David and Miriam (Foster) Choate, was born upon the island "Tuesday, October 1, 1799, at 3 o'clock P. M." — according to the record made by his father in the Family Bible. Although the family removed to Essex village when Rufus was only six months old, the island farm continued to be cultivated by them, and frequent visits were made to it in a "dug-out." To his latest day Mr. Choate loved to repair there, and talk of his boyish work and sport upon that spot. Its scenery and associations became a distinct element in the formation of his character. His biographer wrote, in 1862: —

> An arm of the sea flows pleasantly about it, and a little creek runs up to within twenty rods of the old dwelling, which stands on the hillside, hardly changed from what it was sixty years since, — of two stories, heavy-timbered, low-roomed, with beams across the ceiling, bare and weather-beaten, but with a cheerful southerly outlook towards the marshes, the sea, and the far-off rocky shore of Cape Ann.

During the War of the Revolution a British frigate hovered off the shore, and sent boats into the near harbor of Annisquam. When they approached Hog Island, all the people fled to the main land, save the wife of William Choate, grandmother of Rufus, who refused to leave, and remained with two little children, fearless and unharmed. During the War of 1812, British men-of-war were more than once seen near the islands. The boy Rufus gazed with rapt eyes upon the Tenedos and the Shannon, "sitting like swans upon the water."

In August, 1813, he went to Salem, when the remains of the brave Captain Lawrence of the Chesapeake were reinterred. The last battle-cry of the hero, "Don't give up

the ship!" rang in his ears. The opening sentence of Judge Story's famous oration, "Welcome to their native shores be the remains of our departed heroes!" seemed to him the grandest eloquence. He delighted in accounts of naval battles; and, with his brother Washington and other boys, he fought them "o'er again." He was himself the captain, the admiral; and, above all things, he impressed upon his subordinates the duty of nailing the flag to the mast-head, never, never to be hauled down!

Indeed, the boyhood by the sea, the sight and sound of it in calm and storm, the fishing, the ship-building, the sea-stories and sea-fights, made an indelible impression upon this imaginative boy. His dream then was to be a sea-captain, — or better, himself a naval hero. And though the stronger passion for books, when it sprang up, dispelled that dream, yet to the last of earth he loved sailors and the sea. No man was more familiar with naval history, and the very manœuvres of the vessels in our various naval engagements. His most brilliant and beautiful lecture "The Romance of the Sea" — in which he had incorporated much that he had seen and thought of and about the ocean, and its wonders and its mysteries — was stolen or lost after its delivery in New York, and has never reappeared. Said Richard H. Dana, the author of "Two Years Before the Mast," in his remarks at the Boston Bar meeting, after Mr. Choate's death: "I take for the moment a simile from that element which he loved as much as I love it, though it rose against his life at last."

Although Rufus lost his father when he was only eight years old, his surroundings were pleasant and wholesome. His mother is described as "a quiet, sedate, but cheerful woman, dignified in manner, quick in perception, of strong sense and ready wit," whom her son was said to resemble "in many characteristics of mind and person." When she died, in 1853, he mourned her deeply, although she sank into a "timely grave." When in the Senate, in

1841, he wrote to his children: "Give best love to all at Essex. Go, especially, and give my love to grandmother, who was the best of mothers to your father, and help her all you can." To his son at Essex, about the same time, he wrote: —

> There is a place or two, according to my recollections of your time of life, in the lane, where real, good, solid satisfaction, in the way of play, may be had. . . . One half-hour, tell grandmother, under those cherished buttonwoods, is worth a month under these insufferable fervors.

Many passages might be selected from the orations of Mr. Choate, descriptive of the scenery of Ipswich and its vicinity, with which his youth was familiar. Many spots were identified with his early readings. Forty years after, in riding from Ipswich to Essex, he pointed out a rocky dell, saying, "There is the descent to Avernus." The poetic feeling was already developing. In manhood he was wont to relate that more than once, after driving his father's cow to pasture and throwing away his switch, he returned to pick it up again and place it under the tree from which he had stripped it, saying to himself, "Perhaps there is, after all, some yearning of nature between them still."

For the lad was not exempt from the share of work which usually falls to the lot of New England farmer-boys. He was strong, active, and willing, and one stone-wall builder, at least, thought it a pity so good a worker should be sent to college. And to the master-workman the boy appreciatively said, "If ever I 'm a lawyer, I 'll plead all your cases for nothing." But, as we have seen, he loved play, at which he was eager and indefatigable.

The passion of his life, however, early disclosed itself in his absorbing devotion to reading. Before he was six years old he had devoured Bunyan's Pilgrim's Progress, and could repeat it from memory. A little while before his death, he borrowed the old dog-eared copy, which

refreshed the memories of the child's absorption in the grand allegory. Before he was ten, he had "pretty nearly exhausted" the heavy histories of the village library — Rollin, Josephus, Plutarch, Hutchinson, &c. He read and re-read the Bible, and noted prophesies which foretold, he thought, Napoleon, then at the zenith of his power. He already sucked out the heart of books, as other boys fruit, and his wonderful power and tenacity of memory began already to be marked and commented upon. When in college, afterwards, he would read a chapter just before retiring, and on waking in the morning could repeat it correctly. He once recited in court a long passage from the Assembly's Catechism, saying, "May it please your Honor, my mother taught me this in my earliest childhood."

As an illustration of the vivid impression which the books read in youth make upon a plastic mind, it is worth recording that when, in the trial of Albert J. Tirrell for murder, Mr. Choate broached somnambulism as the theory of the defence, he read a striking passage — containing an incident of a sportsman, who, in his sleep, attempted to kill his comrade — "from a good old book, which used to lie on the shelves of our good old fathers and mothers, and which they were wont devoutly to read. This old book is Hervey's Meditations, and I have borrowed it from my mother to read on this occasion." Tirrell was a somnambulist, and the suggestion that he had killed Maria Bickford in his sleep is said to have been made to Mr. Choate by his friends. This defence was much ridiculed, and Choate was censured for adopting it, whilst the jury is said to have declared they acquitted Tirrell on entirely different grounds. But Mr. Choate, whose judgment in such matters was wellnigh infallible, defended Tirrell, in a subsequent trial for arson upon substantially the same facts, upon the same ground, and the jury again acquitted Tirrell. It is altogether probable

the evidence of somnambulism *did* impress the jury, and it is quite certain that the quaint passage from the Meditations, read in boyhood and never forgotten, must have encouraged the great advocate in the maturity of his splendid powers, as well as lent a certain dignity to the novel and, at first blush, absurd theory.

As a boy Choate was remarked for the same sweetness of temper, and mischievous, roguish love of fun, that characterized him in manhood. He doubtless received valuable impressions from intercourse as a child with Drs. Muzzey and Sewall, who both, at different times, resided in his mother's family. At the age of ten he commenced the study of Latin with Dr. Sewall, continuing it with the clergyman, the Rev. Mr. Holt, or the teachers of the district school. "Among these," says Mr. Choate's biographer, "should be mentioned the Rev. Dr. William Cogswell," whose memoir appears in the first volume of this series of Memorial Biographies, and who taught the school during the successive winters of his Junior and Senior years in college.

Completing his preparation for college in 1815, at the Academy in Hampton, New Hampshire, Rufus entered Dartmouth in the summer of that year, where he graduated in course in 1819, when not quite twenty, — the youngest in the class with two exceptions. He is described "as a diffident, modest, beautiful boy, singularly attractive in person and manner, of a delicate frame, with dark curling hair, a fresh, ruddy complexion, a beautiful ingenuous countenance, his movements marked with a natural grace and vivacity, and his mind from the first betraying the spirit of a scholar."

Chief-Justice Perley in his discriminating eulogy on Mr. Choate, pronounced at Dartmouth College, July 25, 1860, says: —

> There he brought a mind burning with a thirst for knowledge, which death alone had power to quench, kindled with aspira-

tions lofty, but as yet undefined and vague, and stocked with an amount of general information quite remarkable for his years; a physical constitution somewhat yielding and pliant, of great nervous sensibility, but equalled by few for endurance and elastic strength. He came pure from every taint of vice, generous, enthusiastic, established in good principles, good habits, and good health.

It is probable that the broken manner of his preparation for college, and his own sensibility, prevented attention from being fixed upon his extraordinary merit during his first half-year or so. These defects could not long keep him in the background. His quickness of apprehension, love of acquisition, grasp of memory, natural command of beautiful and vivid expression, with extraordinary capacity for application, quickly placed him in advance of all competitors. In his second year, he had already entered upon a course of thorough study, independent of the class curriculum. He read in all directions — poetry, romance, the classics, general literature. He was too eager and busy to mingle much in the sports of the playground, but he was never churlish or inhospitable. All loved him, none envied him. He was librarian of the Social Friends, one of the two literary societies of the College, a position which gave him unusual facilities for gratifying his omnivorous love of books, and doubtless aided in creating and confirming the habit which once chained him to the shelves of a well-known New York bookseller, for nine hours upon the stretch, without food or drink.

The four years of his academic course were coincident with the struggle between the College and the University, terminating in the complete triumph of the College through the decision pronounced in its favor by the Supreme Court of the United States at its term in February, 1819. Daniel Webster had won such pre-eminent glory in the argument of the cause, that Joseph Hopkin-

son, associate-counsel with him, wrote to President Brown: "I would have an inscription over the door of your building: Founded by Eleazer Wheelock, Refounded by Daniel Webster." Webster had thus become not only the most distinguished graduate of the College, but the graduate to whom it was believed to owe its very existence. Choate had already heard Webster, in the famous trial of the Kennistons, at Ipswich in the autumn of 1817, and had become profoundly impressed with the genius of that extraordinary man, who was to exercise so great an influence over his own career.

There had been no difference of opinion to whom should be awarded the highest honors of the Class of 1819. But Choate had been overworked, and his health broke down towards the close of his Senior year. The six weeks before Commencement were passed by him upon a sick bed, attended by the assiduous care of his family friend, Dr. Muzzey, now a professor at Dartmouth. There had been fears that he would be unable to deliver the valedictory. The report of his extraordinary love of study and rare attainments had gone abroad, and public sympathy had been roused by the rumor of his dangerous illness. Thus, when he came upon the rostrum, pallid, attenuated, his dark beauty seemed stamped with the seal of approaching mortality, his eye was thought to burn with an unearthly lustre, and his voice sounded mellow with a pathos, fit to melt into the melody of the heavenly choir. So thought the matrons and maids in the old village church; but before him stretched away forty years of intense study, struggle, forensic agony, and triumph. From that hour, a brilliant future was foretold for the gifted, romantic-looking student.

At this Commencement were present many distinguished friends of the College, eager to hail its resurrection. Webster was there; and Choate, in the famous eulogy, recalls his meeting with him on that occasion.

Ex-governor and ex-Chief-Justice Jeremiah Smith, who also had been of counsel for the College in the State courts, was accompanied by his beautiful and accomplished daughter Ariana, who naturally selected the performance of "young Mr. Choate" as "really admirable," — adding: "This young man is a fine scholar, a hard student, and uncommonly interesting."

Choate remained for a year at Dartmouth as tutor, successful and beloved as a teacher, and vastly extending the area of his own knowledge. James Marsh, the well-known metaphysician, afterwards president of the University of Vermont, was a colleague in tutorship, — to whom Choate wrote ten years later, just after his election to Congress: "I more than once, while it was raging about me, wished myself a tutor in the Indian Charity School, upon $350 per annum, teaching the first book of Livy to the class, and studying with you that dreadful chapter of Mitford about the dialects."

The venerable Judge Nathan Crosby of Lowell, who graduated in the Class of 1820, just as Choate's connection with the College was terminating, writes of him: "The ideal scholar, and the pride of the College, no one had ever so completely won the admiration of the Faculty, of his fellow-students, and of the people of Hanover."

It is proper to guard the reader against the conclusion that, either in his youth or manhood, Mr. Choate could ever justly be charged with affectation or a fondness for theatrical display. Though he probably became conscious, early in his career, of the possession of great talents, yet those who knew him best bear strongest testimony to his unassuming manner and unfeigned modesty. But such was his fresh, even blooming, beauty in youth, — so picturesque, and latterly even so tragic, his appearance in after life, — so intense was his absorption in the preparation, and so completely did he lose his identity in the presentation of his cause, whatever it might be, — that on

every stage he appeared the "well-graced actor," whom all eyes devoured. For his own part, Mr. Choate ever delighted to recur to the happy and profitable days of his sojourn at college. To his son, Rufus, so well-beloved, and for whom he hoped so much, he wrote, whilst a student at Amherst College: "My college life was so exquisitely happy, that I should love to re-live it in my son. The studies of Latin and Greek — Livy, Horace, Tacitus, Xenophon, Herodotus, and Thucydides especially — had ever a charm beyond expression; and the first opening of our great English authors — Milton, Addison, Johnson — and the great writers for the reviews, made that time of my life a brief, sweet dream. It created tastes, and supplied sources of enjoyment which support me to this hour — in fatigue, ill-health, and low spirits."

Again he says to his boy, of college life: "It glides away so fast, and is so delightful a portion of the whole term of life, that I should envy every day and hour. I prized mine. Yet now, as the poet says, it is my grief that I prized it no more."

Of that precious springtime of youth and the beginning of culture, Mr. Choate was thinking in his lecture of March, 1856, before the Mercantile Library Association. Speaking "of the time, say from 1812 to 1820," when Byron and Wordsworth and Scott, Rogers and Coleridge and Madame de Staël, were entrancing the youth of the period, his thoughts flit back twoscore years to Hanover and the Connecticut, and he says: —

> You who can remember this will sigh and say,
>
> "'T was a light that ne'er can shine again
> On life's dull stream."

So might you say, whatever their worth intrinsically: for to you, to us — read in the age of admiration — of the first pulse of the emotions beating unwontedly, — associated with college contentions and friendship; the walk on the gleaming. Rhine-

like, riverside; the seat of rock and moss under the pine singing of Theocritus: with all fair ideals revelling in the soul before

> "The trumpet-call of truth
> Pealed on the idle dreams of youth," —

to you they had a spell beyond their value, and a place in your culture that nothing can share.

Choate's industry, ambition, and fervor of temperament were too marked to permit his wasting long time in "idle dreams;" and the "trumpet-call," is clearly pealed in a letter written him in March, 1820, by his old teacher, now his brother by marriage, Dr. Sewall of Washington.

Dr. Sewall writes to the young tutor, not yet twenty-one, about the speeches, in Congress, of Barbour, Pinkney, Otis, Clay, Lowndes; about Judge Story; of his own great and growing intimacy with Webster, who expresses an interest in Choate, and invites him to visit him, — whom "Rufus" will find "a friend, a companion, and equal." The Doctor supposes that Choate's funds "must be nearly exhausted." He strongly urges him to commence professional study immediately upon the close of the present academic year, — the study of Divinity, if he can bring his "feelings to such a course. . . . I am not without a strong hope that, whatever you engage in for the present, you will finally be called to devote those talents, which God has distinguished you with in so eminent a degree, to that cause which will ultimately swallow up all others." If he cannot come to this "for the present," then he advises him to commence the study of law in Webster's office in Boston. It is quite probable that, aside from his views of duty, Dr. Sewall may have thought Choate's powers eminently fitted for usefulness in the pulpit; and one can imagine in him another Whitefield of a different type. One sentence of Dr. Sewall's letter may well be quoted here as illustrative of Mr. Choate's character, since doubtless it is substantially correct: "I

am aware, Rufus, that you have too much independence to be greatly influenced in your future course by the advice of any one."

But whilst Choate would certainly decide for himself a question on which his future life hinged, he was ever grateful for the disinterested counsel of his wise and kind friend.

In the autumn of 1820 he was entered at the Dane Law School in Cambridge, under the instruction of Chief Justice Parker and Professor Asahel Stearns.

He was, beyond question, an earnest student of the law, but neither then nor ever did he neglect general reading. At that time Edward Everett was connected with the academic department of the University; and after Mr. Choate's death he said: "While he was at the Law School in Cambridge, I was accustomed to meet him, more frequently than any other person of his standing, in the alcoves of the Library of the University."

In the following year, 1821, Choate entered the office, at Washington, of William Wirt, then Attorney-General of the United States, of whom, however, he did not see very much, as Mr. Wirt was at that time in ill-health. Mr. Wirt, however, wrote of him, November 12, 1822: "Mr. Rufus Choate read law in my office and under my direction for about twelve months. *He evinced great power of application, and displayed a force and discrimination of mind from which I formed the most favorable presages of his future distinction in his profession.*" The italics are Mr. Wirt's.

At Washington he heard William Pinkney, both in the Senate and in his last argument in Court, and, it is said, made him his model. He saw John Marshall preside in the Supreme Court, which, as then constituted, he described in 1853 as "A tribunal unsurpassed on earth in all that gives illustration to a bench of law, not one of whom any longer survives." He became familiar with the public administration of affairs. To James Marsh he wrote: "I

am sadly at a loss for books here, but I sit three days every week in the large Congressional Library, and am studying our own extensive ante-Revolutionary history, and reading your favorite Gibbon. The only classic I can get is Ovid; and while I am about it, let me say, too, that I read every day some chapters in an English Bible. I miss extremely the rich opportunities we enjoyed formerly, and which you still enjoy, but I hope I shall at last begin to *think*."

The sudden death of his favorite brother Washington, of whom we have spoken, brought him back, inconsolable, to Essex. After a time he entered his name in the law-office of Mr. Asa Andrews of Ipswich, and subsequently he finished his studies with Judge Cummins of Salem. Admitted an attorney of the Court of Common Pleas in September, 1822, he was not enrolled as an attorney of the Supreme Court until two years later, according to the practice of that day.

His biographer tells us that his sign was first put up in Salem; but the very next day he took it to more "removed ground" at South Danvers, where he began the practice of the law in earnest.

Thus launched upon a professional career at the age of twenty-four, Mr. Choate's success in obtaining employment, though as great as could have been reasonably expected, was not at first remarkable. As a student, he had been so admired and caressed, that probably his friends may have flattered him with the prospect of being at once overwhelmed by business. In a letter to his friend Marsh, November, 1823, he refers to a "sense of miserableness," that "presses upon me every moment that I am not hard at study." Indeed we are told by his biographer, that during the first two or three years of his residence at Danvers he was sometimes despondent, and even debated whether he ought not to throw up law and seek other means of support. This was a mood easily

understood by such as have passed through a similar experience. Separated from the companionship of the friends by whom he had been loved and cheered, he very probably fancied that the talents of which he was conscious were unappreciated by the strangers among whom he had come to live. This was a natural reaction of feeling; but, with his healthful temperament, it could not last long, and there is no trace of its recurrence at any subsequent period. Indeed, with this exception, the tone of Mr. Choate's life is manly and bracing. Hard work, the excitement of causes, and domestic happiness soon wrought a permanent cure; for in 1825, he married Helen, daughter of Mills Olcott, Esq., a lawyer of Hanover, New Hamphire, whose acquaintance he of course had made whilst connected with Dartmouth College. Mr. Olcott was widely known, and highly respected in the valley of the upper Connecticut. Mrs. Choate survived her husband more than five years, dying December 8, 1864. She was a woman of gentle, refined, and pure character, whose serenity and steadfastness were ever a support and consolation to him.

After all, the Danvers folk were not slow in finding out what sort of man their young attorney was. They sent him to the House of Representatives in 1825, and again in 1826; and his service there opened the way to the State Senate in 1827. We are told that "he took a prominent part in the debates, and the energy and sagacity which he displayed gave him a wide reputation." In his lecture upon "The Power of a State developed by Mental Culture," delivered before the Mercantile Library Association, November 18, 1844, he says: "I may be permitted to remember that the first time I ever ventured to open my lips in a deliberative body, I had the honor to support a bill in the House of Representatives, in Massachusetts, providing for educating teachers of common schools. I should be perfectly willing to open

them for the last time in the same place, in support of the same proposition exactly."

He was an active member of a literary society which he found established in Danvers. He joined the Danvers Light Infantry, and delivered a Fourth-of-July oration before that corps, and another before the citizens at large. In short, he received all the honors and discharged all the functions belonging to a popular and talented young lawyer in that day. We are informed that he always had a peculiar regard for Danvers as the place of his early struggles and success. And so he expresses himself in the exordium of one of his most beautiful addresses, delivered in South Danvers, at the dedication of the Peabody Institute, September 29, 1854: "I esteem it a great privilege to have been allowed to unite with my former townsmen, and the friends of so many years, — by whose seasonable kindness the earliest struggles of my professional life were observed and helped, — the friends of all its periods, — so I have found them."

The lecture on the Waverley Novels was written, we are told, during the Danvers residence.

But in a short time Choate was deeply absorbed in forensic contests. Only a small pecuniary value was involved in most of them; but he soon became admired as the man who did his best in every cause. He threw himself with as much enthusiasm into a trial before a country justice in a shoemaker's shop as if it were before the Supreme Court. He magnified every litigation, and each litigant, magistrate, and juryman. He never hesitated to pour out all his wealth of imagery, the profusion of his classical allusions, and all the exuberance of his rhetoric upon trivial occasions and before an illiterate audience. And he found his account in it. There was a subtle flattery in this treatment which stole the hearts of his hearers. But he was also fortunate enough to appear before Lemuel Shaw, afterwards the great Chief-Justice

of the Supreme Court of Massachusetts, and Samuel Hoar of Concord, in an arbitration, as early as June, 1826. Judge Shaw wrote of that appearance: "We were much and very agreeably surprised at the display of his powers. It appeared to me that he then manifested much of that keen legal discrimination, of the acuteness, skill, and comprehensive view of the requirements of his case, in the examination of witnesses, and that clearness and force in presenting questions both of fact and of law, by which he was so much distinguished in his subsequent brilliant professional career. He soon after this removed to Salem, and in a short time became extensively and favorably known as a jurist and advocate."

There could be little question of mistaken vocation as to a young lawyer who made so vivid an impression upon those experienced and hard-headed seniors, Shaw and Hoar.

The most eloquent advocate in Massachusetts before the Revolution, James Otis, gathered his first laurels in defence of some young men of good family in Plymouth, complained of for disorderly conduct. Similarly, the first case in which Rufus Choate professionally appeared in Salem, was in defence of a number of young men of respectable families, charged with riotous proceedings at a low dance-house. Asahel Huntington, long an eminent member of the Essex Bar, penned in after years a very interesting sketch of this case, which "excited much interest from the character and position of some of the parties implicated, and especially from the fame, even then, of the young advocate. He had before that time, I believe, appeared before some of the magistrates of Danvers." This was known as the Mumford Case. Of Choate's argument, Mr. Huntington says: —

> It was a new revelation to this audience. They had heard able and eloquent men before in courts of justice and elsewhere. Essex had had for years and generations an able, learned, and

eloquent bar; there had been many giants among us, some of national fame and standing, but no such giant as this had appeared before, — such words, such epithets, such involutions, such close and powerful logic all the while, such grace and dignity, such profusion, and waste even, of everything beautiful and lovely. No, not waste, he never wasted a word. . . . The feeling excited by this first speech of Mr. Choate in Salem was one of great admiration and delight. All felt lifted up by his themes. . . . And all were prepared to welcome him when, a few years afterwards, he took up his abode here, after the elevation of his old friend and teacher, Judge Cummins, to the bench of the Court of Common Pleas.

This seems extravagant language as applied to the almost maiden plea of a young man of twenty-five; but it was deliberately written, long subsequently, by a man of sense and observation. Certain it is that, as the years went on, the appearance of Choate in any cause, under any circumstances, was the signal for thronged court-rooms by audiences lifted high and still higher upon the lofty and ever renewed flights of his winged eloquence.

To Salem, then, Choate removed in 1828, — at that time, as it always has been, the principal seat of the courts of Essex County.

The bar of that county has been illustrated by famous men, and was still a very strong and able one when Choate was put upon his mettle there. He early acquired a great prominence in criminal causes, and it is said that no man whom he defended was ever convicted whilst he lived in Salem. He got plenty of applause, but, probably, very little money in proportion to his labor. One of the most famous of his petty causes was that of Jefferds, indicted for stealing a flock of turkeys, and defended by Choate. He was tried three, if not four times, with the same result, — a disagreement of the jury; until, in despair, the Commonwealth's attorney entered a *nol. pros.* The case had become a *cause célèbre*, the frequenters of the courts asking: "When is the turkey case coming on

again?" It is said that Jefferds afterwards called to pay his respects to his counsel in Boston, and was much surprised at not being recognized, exclaiming: "Why, Mr. Choate, I 'm the man you plead so for in the turkey case, when they could n't find anything agin me."

Mr. Huntington's comment is: "There had been only forty-four good and true men *against* him — if there were four trials, and I believe there were — without including twenty-three more of the grand jury." Possibly Jefferds thought it unkind that he should not be recognized by his attorney, to whom his cause had furnished such brilliant opportunities for display. But Mr. Choate's biographer tells us he was generally averse to personal contact with his clients in criminal cases. He never exchanged a word with Tirrell till the day of the trial, when, after the prisoner had been placed in the dock, he walked to the rail and said: "Well, sir, are you ready to make a strong push for life with me to-day?" The answer, of course, was in the affirmative. "Very well, we will make it," rejoined Mr. Choate, and returned to his seat, not speaking to Tirrell again. After the second successful defence of Tirrell, some legal wit said, "Tirrell exists only by the sufferance of Choate." But Tirrell, it is recorded, had the impudence to write to Mr. Choate, asking a return of one-half the small fee paid, upon the ground that it had been so easy to persuade two juries of his innocence.

Doubtless one reason why Choate was reluctant to accord interviews to his clients in criminal causes, was his inflexible rule never to ask the accused if he did the act charged; but, in one instance, after looking at the defendant, he said: "He did it, — he *sweats so*."

During many years of his professional career, and till he thought he had fully earned his discharge from that branch of practice, Mr. Choate did not consider himself at liberty to decline retainers in criminal causes. When

retained he believed himself bound, in honor and conscience, to present all the law and all the evidence, with his entire ability, to the court and the jury; but he did not consider himself bound to receive and conduct such a cause upon a theory which did not commend itself to his sense of propriety, or his view of the evidence, or the fitness of things.

It must not be supposed that Mr. Choate did not, at all times, try many civil actions; but his glowing eloquence and extraordinary resources were naturally more conspicuous in criminal cases, in the days of his youth and strength, and before such trials had become irksome to him, as they afterwards were. There was, no doubt, a keen intellectual enjoyment of the capacity to overcome great obstacles. It must also be remembered, that the line between civil and criminal practice was not so sharply drawn fifty or sixty years ago as it is now. There was not the same subdivision of legal business as at present, nor was a purely criminal lawyer looked upon with as much disfavor as at present.

Of Mr. Choate it is no exaggeration to say, that his talents, dignity, and devotion ennobled every cause in which he was engaged.

It may also be truthfully said in this connection, that, however unpopular any cause in which he was ever employed, nobody ever thought of impeaching his integrity and honor, professional or personal. In 1830 he was associated with Mr. Webster in the prosecution of Crowninshield and the Knapps for the murder of Captain Joseph White of Salem. Probably he may have been employed at the suggestion of Webster himself, who was the master-spirit of that famous trial. Mr. Choate in the Dartmouth Eulogy, speaking of Webster's great professional displays, remarks: "One such I stood in a relation to witness with a comparatively easy curiosity, and yet with intimate and professional knowledge of all the embarrass-

ments of the case." Choate's name is not of record in the cause, but he assisted in preparing the case for the government, and was constantly in consultation with Webster and his associates.

November 4, 1829, he writes to his old friend Marsh, in excusing himself for declining to review that gentleman's edition of Coleridge's "Aids to Reflection," "My habits have become almost exclusively professional."

But the time was at hand when he was to be called away from professional pursuits. In October, 1830, he was nominated by the National Republicans of Essex South, as Representative to Congress. It is stated, and is believed to be true, that Choate never sought this, or any other office or position held by him, and that this nomination was made without his knowledge, and accepted by him only after some persuasion. The nomination was not satisfactory to many. Benjamin W. Crowninshield — formerly Secretary of the Navy in the administrations of Madison and Monroe, a gentleman of wealth, respectability, and influence — had represented the district for eight years, and was not yet ready to retire. There were probably others who had looked for the succession, in due order of promotion. Choate was objected to as a young man, a new comer, ambitious and without experience. One young lawyer is remembered to have declaimed vigorously against him, — and with some reason, — that, instead of being a substantial citizen like Mr. Crowninshield, he was only stopping in Salem, "while he oated his horse," on the way from Danvers to Boston. Mr. Crowninshield was supported as an independent candidate; but Choate was elected by a majority of more than five hundred votes over all opposing candidates. His own motives and feelings are expressed, doubtless with sincerity, in his letter to Marsh, dated November 14, 1830.

The matter of my election I do suppose rather a foolish one on my part; but the nomination was so made that I could not

avoid it without wilfully shutting myself out of Congress for life, — since my declining would undoubtedly have brought forward some other new candidate, who, if elected, would go ten years at least; long before which time, if living, I might have removed from the District. . . .

The responsibilities of the new place I appreciate fully; *pro parte virili*, I shall try to meet them. I have a whole year yet, you know, before me, before I take my seat; quite short time enough for me to mature and enter on a course of study and thought adapted to this sphere of duty. I hardly dare yet look the matter in the face. Political life — between us — is no part of my plan, although I trust I shall aim in good faith to perform the duties thus temporarily and incidentally assigned.

There is no reason to think that Mr. Choate ever swerved from the views thus expressed as to a political career. He prized the honor of this election, as afterwards that to the Senate; but he looked upon either service as temporary; and, having rendered it to the best of his ability, he returned with satisfaction to private life.

During his residence in Salem, Choate had continued his early habit of diligent study. Standing at a high desk, pen in hand, and a manuscript book before him, he read law and made notes assiduously. At this period he carefully studied equity as administered in Massachusetts, and collated the decisions. He still kept up his literary tastes, but specially devoted himself to mental and political philosophy, and at one time to theology. After the election, he began to prepare himself for his new duties; not procrastinating, as the date of the following memorandum shows. It is the first page of a new commonplace book, then commenced.

November 4, 1830.

Facienda ad munus nuper impositum.

1. Pers. quals. [personal qualities]. Memory — Daily Food and Cowper, *dum ambulo*. Voice. Manner — *exercitationes diurnæ*.

2. Current politics in papers. 1. *Cum notulis*, daily. — Geog. &c. 2. Annual Reg'r. Past Intelligencers, &c.

3. District S. E. [*i. e.* Essex South]. Pop. Occs. [population, occupations]. Modes of Living. Commerce — the Treaties, and Principles on which it depends.

4. Civil History of U. States, in Pitkin and [original] Sources.

5. Exam. of Pending Questions: Tariff, Pub. Lands, Indians, Nullification.

6. Am. and Brit. Eloquence, — Writing, Practice.

Then follow [says his biographer] more than twenty pages of the closest writing, with abbreviated and condensed statements of results, drawn from many volumes, newspapers, messages and speeches, with propositions and arguments for and against, methodically arranged under topics, with minute divisions and subdivisions. Some of these heads, under which he endeavors to compress the most essential political knowledge, are these: —

1. Public Lands, giving the number of acres in the whole country, the States where they lie, the sources whence derived, the progress and system of sales, &c., &c.

2. Politics of 1831, brought down to the beginning of the session in December; an analysis of the President's Message, and notes upon the subjects which it suggests; the measures and policy of the government.

3. The Tariff, beginning with an analysis of Hamilton's Report in 1790; History of Legislation respecting it; Internal Improvements, their cost, and the Constitutional power of making them.

Then follow three or four closely written pages on particular articles, — wool, cotton, flax, hemp, iron, — as affected by the tariff.

4. Analysis of British opinions.

5. Cause of the excitement in the Southern States.

6. Commerce of the United States in 1831.

These are but samples of the subjects which occupied his attention, but they may serve to indicate the thoroughness with which he prepared for his new position.

Regarding this systematic and patient course of study,

— knowing already his remarkable power of acquisition and strength of memory, to which we may add an equally wonderful ability to assimilate, — we are not surprised to be told that when he took his seat in Congress in December, 1831, he speedily attained high rank. He was not forward or assuming, and did not speak very frequently, but watched the course of public business with close attention, studied new questions carefully, and was often in the library of Congress. He was not then, nor ever, tolerant of the business of committees; his mind moved too quickly for the processes of ordinary men, and he endured with impatience the waste of time so precious to him. There were some great and many able men on the floor of Congress. In the Senate were Webster, Prentiss of Vermont, Peleg Sprague of Maine, Marcy, Dallas, Clayton, Clay, and Benton; whilst in the House there were John Quincy Adams, Nathan Appleton, George N. Briggs, Everett, and John Davis of Massachusetts, Evans of Maine, Verplanck of New York, Tom Corwin, Wayne of Georgia, McDuffie of South Carolina, James K. Polk of Tennessee.

Mr. Choate made a speech in his first session upon the Revolutionary Pension Bill, which was both instructive and persuasive. His speech upon the Tariff, of which he had made so careful a study, is said to have made a profound impression upon the House in its delivery, — much heightened in effect by the passage of a severe thunderstorm, to whose influences Choate was always exquisitely sensitive. This effort established his fame as a parliamentary orator. It may be observed, in passing, that his famous Eulogy on Webster, at Dartmouth, was pronounced under similar circumstances, producing similar impressions upon his auditors.

In April, 1833, Choate was re-elected by an increased majority. March 28, 1834, he spoke upon the removal of the deposits by President Jackson, an effort of which

"old Ben Hardin" of Kentucky said: "I became charmed by the music of his voice, and was captivated by the power of his eloquence, and found myself wholly unable to move until the last word of his beautiful speech had been uttered."

At the close of this session Mr. Choate resigned his seat in Congress, and removed to Boston, where he devoted himself with renewed zeal to the practice of law. August 16, 1834, he delivered, at the bicentennial of the settlement of his native town of Ipswich, the admirable address which, in his published works, is called "The Colonial Age of New England." To this period is ascribed also a lecture upon Poland; and, soon after his removal to Boston, the famous "Romance of the Sea," of the loss of which, soon afterwards, mention has been made.

From 1834 to 1841 Choate remained in private life, trying law-cases, winning and maintaining a high place at the Suffolk Bar, studying law, and finding his delight, according to his wont, in literature. When, in 1841, Mr. Webster entered the Cabinet of President Harrison, Mr. Choate was chosen by the Massachusetts Legislature to succeed him in the Senate of the United States. It is explicitly declared that he at first positively refused the offer of an election, and only yielded upon great urgency, and the understanding that he should be permitted, after two or three years, to resign.

The reasons of his reluctance are probably not far to seek. He enjoyed the contests and triumphs of the bar, he was poor, and desired to secure a competence for his family; he delighted in his home and was loath to leave it; he was probably conscious of a mental and moral delicacy which made the conflicts of politics distasteful to him, and he despised political intrigue and office-seeking. The sudden death of President Harrison caused Mr. Choate to be summoned to deliver a eulogy upon him in Faneuil Hall, which is well remembered as a pathetic and eloquent production.

Taking his seat in the Senate at its extra session, Mr. Choate bore a prominent part in the memorable debates that followed. He first spoke, with great applause, upon the questions growing out of the case of Alexander McLeod, indicted in the State of New York for the burning of the steamer Caroline.

Upon the bill for the re-establisment of a National Bank, Mr. Rives of Virginia moved an amendment, making the assent of States necessary for the creation of branches within their limits. Mr. Choate briefly supported this amendment, not as doubting the Constitutional power of Congress to dispense with such assent, but from considerations of policy. He expressed his doubt whether, without such a provision, the bill could be carried through Congress, and declared his belief that if it should be, it would fail to become a law. He did not enter upon the grounds of his belief, saying: "The rules of orderly proceeding here, decorum, pride, regret, would all prevent my doing it. I have no personal or private grounds for the conviction which holds me fast; but I judge on notorious and, to my mind, decisive indications." This language very clearly indicated Mr. Choate's belief that the bill would be vetoed by President Tyler if it passed Congress. But it does not seem to warrant the conclusion that he had any actual or peculiar knowledge upon the subject. He was, however, the intimate friend and protégé of Mr. Webster, President Tyler's Secretary of State. Henry Clay, then unmistakably the autocratic head of the Whig party, and ready to declare war upon the administration, roughly and ungenerously interrogated Mr. Choate as to the grounds of his belief. Choate was unquestionably taken by surprise by the violent and arrogant manner of this attack. He was himself a young member, not perfectly familiar with the Senate and its usages, whilst he had been accustomed to regard Mr. Clay with the deference to which his age, experience,

and pre-eminent abilities entitled him. It is the tradition that Choate did not reply with all the spirit and vigor the occasion called for. Mr. Choate's careful and judicious biographer was "informed by those who were present, that the impression in the Senate Chamber was much less than it was represented by the newspapers." But Mr. Winthrop, in his fine Memorial of Henry Clay, says: "Like Palmerston, he could sometimes be 'lofty and sour,' and sometimes even rude towards those who opposed him. He was so to Rufus Choate, in my own hearing, in the Senate Chamber." But Mr. Clay could also be magnanimous; and the very next day he tendered open and ample apology upon the floor of the Senate, which was accepted by Mr. Choate with frank grace. Such a collision was doubtless very distasteful to the gentle nature of Choate; but if he did not rise quite promptly to the shock of Henry Clay's overbearing onset, it is not to be inferred that he was crushed by it, or that he did not gain later laurels upon the same field. Horace Greeley tells us that he saw Stephen A. Douglas, when a new member of the Senate, "quail" before the glance of Daniel Webster; but the friends of Douglas glory that, on another day, he struck his lance full upon the shield of the Great Expounder.

Choate made a lofty speech in favor of the confirmation of Edward Everett as minister to England, opposed on the ground of his alleged Abolitionism. In the next session he spoke ably on a number of measures, especially on the Bankrupt Bill, the Tariff, and the bill to provide further remedial justice in the courts of the United States, which grew out of the difficulties of the case of McLeod. In 1843 he vigorously supported Mr. Webster's Ashburton Treaty, making three speeches on that and kindred topics.

In the session of 1844 he debated, with great power and eloquence, the Oregon Question; and his noble strain

in reply to Mr. Buchanan's declaration that America entertained a deep-seated enmity to England, is one of the finest passages of Congressional oratory. The late Alexander H. Stephens quoted it from memory thirty-four years after, in a very graphic sketch of the delivery of the speech; "at the conclusion of which," he says, "I was confirmed in the opinion that he was the greatest orator I ever heard, — in this respect, greater than Calhoun, Clay, or Webster!"

Mr. Choate's speech upon the bill proposed by Mr. McDuffie of South Carolina, to revive the Tariff of 1833, contains some brilliant passages, especially the highly characteristic description of the eccentricities of the climate of New England. And his reply to Mr. McDuffie's personal assault upon himself is a masterpiece of effective and even scornful satire; and must be considered conclusively to establish that, even if he once faltered for an instant when the masterful Kentuckian bore down upon him, he would yield to no less a champion. Upon the whole it may be safely recorded, that if Mr. Choate had chosen to remain in the Senate, his high aims, patient investigation, lofty — even chivalrous — sense of honor, charming grace of manner, wondrous oratory, and no less wonderful adaptability, would have made him the cherished favorite and ornament of the Chamber. Multitudes would have flocked to hear his speeches, and we should now read such encomiums upon them as were poured forth in the enraptured Commons at the close of Sheridan's dazzling speech on the impeachment of Warren Hastings. But a political leader, Mr. Choate could never have been. He was not a coward or sluggard; he was, on the other hand, a bold champion. He would ride forth on caracoling steed, with fluttering pennon, and gallant mien and high heart, and lance gaily set at rest, against any challenger. But neither by temperament, nor by ambition or patience, was he adapted to the long, severe, uninter-

mitting contests of protracted sessions. His profession, his library, his wife and children, beckoned him away, and his and their necessities constrained him, when he resigned his seat in the Senate in 1845.

In his last session he argued with great power against the annexation of Texas. He supported George Evans's amendment, that Florida should not be admitted to the Union until the articles should be struck from her constitution, forbidding the legislature to emancipate slaves, or to permit the immigration of free persons of color. He took great interest in the organization of the Smithsonian Institution, and was the author and principal advocate of the library plan which was adopted by Congress. Elected a member of the Board of Regents, he continued to take great interest in the affairs of the Institute until, in 1854, a departure was made from that plan by the Board. Opposing it with even more than his wonted eloquence, but defeated, he resigned the trust immediately after.

Choate's reputation as an orator was much enhanced by his address, "The age of the Pilgrims, the Heroic Period of our History," made in New York before the New England Association, December 22, 1843. This address is rich with high thought, with poetry, with beauty, tenderness, and pathos. Its effect in delivery was magnetic. The vividness of the following description of the scene will justify its transcription here: —

> The oration was delivered in the old Broadway Tabernacle, then the largest auditorium in the city. The great building was crowded to hear the famous speaker. Mr. Webster and other distinguished men were on the platform. Mr. Choate was then in his prime, and his presence was hardly less striking than that of the Great Expounder. [He was] tall [and] thin, his complexion a rich olive, his eye large, liquid, glowing; the face Oriental, rather than American, and generally rather sad than eager and passionate. His voice was a rich baritone, sonorous, majestic,

finely modulated, and inimitable in the expression of pathos. He philosophically developed the rise of Puritanism, and the cause of the Pilgrim emigration, and came down to the Mayflower, to Miles and Rose Standish, to the landing at Plymouth, the severity of the winter, the famine and the sickness, and the many deaths, — fifty out of a hundred, including the beautiful Rose Standish. Pausing, with a sad, far-off look in his eyes, as if the vision had suddenly risen upon his memory, and with a voice inexpressibly sweet and pathetic, and nearly choked with emotion, he said: "In a late visit to Plymouth I sought the spot where these earlier dead were buried. It was on a bank somewhat elevated, near, fronting, and looking upon the waves — symbol of what life had been to them; ascending inland behind and above the rock — symbol also of that Rock of Ages on which the dying had rested in that final hour."

I have never seen an audience so moved. The orator had skilfully led up to this passage, and then, with a voice surcharged with emotion, symbolized the stormy and tumultuous life, the sudden and sad end, and the heroic faith with which, resting upon the Rock of Ages, they had lain down on the shore of the Eternal Sea. As Choate approached the climax, Webster's emotion became uncontrollable; the great eyes were filled with tears, the great frame shook; he bowed his head to conceal his face in his hat, and I almost seemed to hear his sob. The audience was flooded with tears, a handkerchief at every face; and sighs and sobs soughed through the house, like wind in the tree-tops. The genius of the orator had transferred us to the spot; and we saw the rocky shore, and with him mourned the early dead. We have had one Rufus Choate; alas! we shall never have another.

It is probably within bounds to say that, after this masterly effort, Mr. Choate's reputation was established in all quarters, as one of the first, if not the very first of eloquent orators and persuasive advocates. There was more question about the solidity of his understanding and the strength of his reasoning. There are expressions of Mr. Choate extant, which show that he understood very well the estimation in which he was held, and that he

resolutely determined to spare no effort to conquer the world's esteem and his own.

He had always been a close student and a ravenous reader. Of course, the range of his studies had in early life been ordered by the necessities of his scholastic and professional preparation; afterwards, very much by the exigencies of his legislative service in the State and in Congress, and by his legal engagements. Outside of the labors thus imposed upon him, he had at times studied law very diligently, and had taken all literature for his province. Probably, however, his reading, though extensive, had been rather desultory. About this time he seems to have distributed his scant leisure more rigorously. And, as the most valuable lesson of Mr. Choate's life for young men, especially those in the professions, is the necessity and profit of economizing spare portions of time for self-culture, it may be useful to set forth his methods in detail. This, fortunately, may be done in his own language, for he began in May, 1843, what he styles an "imperfect journal of readings and actions," in which he writes: —

I can see very clearly that an hour a day might, with manifold and rich usefulness, be employed upon a journal. Such a journal, written with attention to language and style, would be a very tolerable substitute for the most stimulating and most improving of the disciplinary and educational exercises — careful composition. It should not merely enumerate the books looked into, and the professional and other labors performed, but it should embrace a digest, or at least an index, of subjects of what I read; some thoughts suggested by my reading; something to evince that an acquisition has been made, a hint communicated, — a step taken in the cultivation of the immortal, intellectual, and moral nature; a translation, perhaps, or other effort of laborious writing; a faithful and severe judgment on the intellectual and the moral quality of all I shall have done, — the failure, the success, and the lessons of both. Thus conducted, it would surely be greatly useful. Can I keep such an one? *Prorsus ignoro — prorsus dubito. Spero tamen. . . .*

I have a little course, for instance, of authors, whom I read for English words and thoughts, and to keep up my Greek, Latin, and French. Let me, after finishing my day's little work of each, record here what I have read, with some observation or some lesson. I am sure the time I now give to one would be better spent if equally divided between him and this journal. I am not to forget that I am, and must be if I would live, a student of professional forensic rhetoric. I grow old. My fate requires, appoints, that I do so διδασκόμένος, — *arte rhetoricâ*. A wide and anxious survey of that art and that science teaches me that careful, constant writing is the parent of ripe speech. It has no other. But that writing must be all rhetorical writing, — that is, such as might in some parts of some speech be uttered to a listening audience. It is to be composed as in and for the presence of an audience. So it is to be intelligible, perspicuous, pointed, terse, with image, epithet, turn, advancing and impulsive, full of *generalizations*, *maxims*, illustrating the sayings of the wise. . . .

Those I love best may read, smile, or weep, when I am dead, at such a record of lofty design and meagre achievement! yet they will recognize a spirit that endeavored well.

In this critical spirit he reads the Gospels in Greek, and compares with that the French and German text; then reads commentators, and records his impressions of all. In the same way he reviews Quintilian, *de copia verborum*, and writes: —

How such a language — such an English — is to be attained, is plain. It is by reading and hearing, — reading the best books, hearing the most accomplished speakers. Some useful hints how to read and how to hear I gather from this excellent teacher, and verify by my own experience and accommodate to my own taste.

I have been long in the practice of reading daily some first-class English writer, chiefly for the *copia verborum*, to avoid sinking into cheap and bald fluency, to give elevation, energy, sonorousness, and refinement to my vocabulary. Yet with this object I would unite other and higher objects, — the acquisition of things, of taste, criticism, facts of biography, images, sentiments. Johnson's Poets happens just now to be my book.

May 15, 1843, he writes of a trial in which he had been engaged : —

I am not conscious of having pressed any consideration farther than I ought to have done, although the entire effort may have seemed an intense and overwrought one. . . .

I could and should have prepared my argument beforehand, and with more allusion, illustration, and finish. Topics, principles of evidence, standards of probability, quotations, might have been much more copiously accumulated and distributed. There should have been less said, — a better peroration, more dignity, and general better phraseology.

I remark a disinclination to cross-examine, which I must *at once check*. . . .

Whole days of opportunity of preparation stupidly lost. . . . I have read nothing since Sunday until to-day; and to-day only a page of Greenleaf on Evidence, and a half-dozen lines of Greek, Latin, and French. But I prepared the case of the Ipswich Man. Co. My Greek was the Fifth Book of the Odyssey.

Again he writes : —

The week which closes to-day has not been one of great labor or much improvement. I discussed the case of Allen and the Corporation of Essex, under the pressure of ill-health; and I have read and digested a half-dozen pages of Greenleaf on Evidence, and as many more of Story on the Dissolution of Partnership. Other studies of easier pursuit, nor wholly useless, — if studies I may denominate them, — I have remembered in those spaces of time which one can always command, though few employ.

He then digests what he has read of Tacitus in Latin, and of the Odyssey in Greek; also, what he has read in French. "For English, I have read Johnson's Lives to the beginning of Dryden; Alison, a little; Antony and Cleopatra, a little; Quintilian's chapters on Writing and on Extempore Speech I have read and re-read, but mean to-morrow to abridge and judge," which, on the morrow, he elaborately does, and a translation from the same author follows.

June 6, he writes: —

I have carefully read a page or two of Johnson's Dryden, and a scene or two of Antony and Cleopatra every morning, — marking any felicity or peculiarity of phrase; have launched Ulysses from the isle of Calypso, and brought him in sight of Phæacia. Kept along in Tacitus, and am reading a pretty paper in the Memoirs on the Old Men of Homer. I read Homer more easily and with appreciation, though with no helps but Cowper and Donegan's Lexicon. Fox and Canning's speeches are a more professional study, not useless, not negligently pursued. Alas, alas! there is no time to realize the dilating and burning idea of excellence and eloquence inspired by the great gallery of the immortals in which I walk!

June 24th. — I respire more freely in this pure air of a day of rest. Let me record a most happy method of legal study, by which I believe and feel that I am reviving my love of the law; enlarging my knowledge of it; and fitting myself, according to the precepts of the masters, for its forensic discussions. I can find, and have generally been able to find, an hour or two for legal reading beyond and beside cases already under investigation. That time and that reading I have lost, no matter how. I have adopted the plan of taking a volume, the last volume of Massachusetts Reports, and of making a full brief of an argument on every question in every case, examining all the authorities, finding others, and carefully composing an argument as well reasoned, as well expressed, as if I were going to-morrow to submit it to a bench of the first of jurists. At the completion of each argument, I arrange the propositions investigated in my legal commonplace book, and index them. Already I remark renewed interest in legal investigations; renewed power of recalling, arranging, and adding to old acquisitions; increased activity and attention of mind; more thought; more effort; a deeper image on the memory; growing facility of expression. I confess delight, too, in adapting thus the lessons of the great teachers of rhetoric to the study of the law and of legal eloquence. I resume Quintilian, p. 399, § 7: [A translation follows.] . . . Thus far, Quintilian.

I read, beside my lessons, the Temptation, in Matthew, Mark, and Luke, in the Greek; and then that grand and grave poem which Milton has built upon those few and awful verses, Para-

dise Regained. I recognize and profoundly venerate the vast poetical luminary "in this more pleasing light, shadowy."

In the following winter we find him writing to his daughters from Washington: "I am reading French law-books to prepare for a case."

He was still writing an hour every day in his journal; "it must be an hour of activity and exercise of mind." In this fashion he records his impressions of Pope, and the youth of Milton: —

Boston, *June* 23, 1844. — It is necessary to reconstruct a life at home; life professional and yet preparatory; educational, in reference to other than professional life. In this scheme the first resolution must be *to do* whatever business I can find to do, — *tot. vir. maximo conatu*, — as for my daily bread. To enable me to do this, I must revive and advance the faded memory of the law; and I can devise no better method than that of last summer, — the preparation of a careful brief, on every case in Metcalf's last volume, of an argument in support of the decision. In preparing this brief, law, logic, eloquence, must be studied and blended together. The airy phrase, the turn of real reply, are to be sought and written out. I may embody in a commonplace the principles acquired; and I shall particularly strive to become as familiar with he last cases of the English and Federal Benches at least, — and, if possible, of those of New York, Maine, and New Hampshire, — as of our own. I have lost the whole course of these adjudications for some years. These studies — and this practice — for the law.

We are told that Mr. Choate kept up this method of studying the Massachusetts Decisions, and of making a brief upon the topic of each, to the end of his life.

I advance to plans of different studies, and to the training for a different usefulness and a more conspicuous exertion. To avoid a hurtful diffusion of myself over too wide and various a space, — *laboriose nihil agens*, — I at once confine my rhetorical exercitations within strict and impassable limits. I propose to translate Cicero's Catiline orations, — or as many as I can, be-

ginning with the first, — with notes. The object is, — 1st, the matter and manner of a great master of speech; 2d, English debating style and words; 3d, the investigation of the truth of a considerable portion of history. All the helps are near me. I shall turn the orator, as nearly as I can, into a debater statesman of this day, in Parliament and in Congress.

With this I shall read Burke's American speeches, writing observations on them. The object is his matter and manner, useful gleanings, rules of speech. But to this is to be added the study of politics. And for this circumstances are propitious. The approaching election requires that the true national policy of the country should be impressed on the minds of the people of America. To elect a Whig administration is to prefer, and to secure, the practical realization of that policy. To induce the people to elect such an administration, you must first teach them to prefer to desire that policy. To do that, it must be explained, contrasted, developed, decorated. To do that, it is to be deeply studied. I mean, therefore, to compose discourses on the tariff; on Texas; on currency; on the general points of difference and grounds of choice between the parties, and the like, — embodying what I understand to be the Whig politics, and the sound politics of the hour. In all, through all, an impulsive presentation of truths — such an one as will move to the giving of votes for particular men, representing particular opinions — is the aim. Every one ought to be, and to involve: 1st, an honest study of the topic, and so an advance in political knowledge; 2ndly, a diligent effort to move the public mind to *action* by its treatment, and so an exercise *in speech*. *Princip. fons sapientiæ.* Truth for the staple — good taste, the form — persuasion to act, for the end. . . .

July 17. — Engaged in translating "Cicero against Catiline," — with the aid of Sallust's History.

Again he writes: —

There is a pleasure beyond expression in revising, re-arranging, and extending my knowledge of the law. The effort to do so is imperatively prescribed by the necessities and proprieties of my circumstances; but it is a delightful effort to record some of the uses to which I try to make it subservient, and some of the methods on which I conduct it. My first business is obvi-

ously to apprehend the exact point of each new case which I study, — to apprehend and enunciate it precisely, neither too largely nor too narrowly, — accurately, justly. This necessarily and perpetually exercises and trains the mind, and prevents inertness, dulness of edge. This done, I arrange the new truth, or old truth, or whatever it be, in a system of legal arrangement, for which purpose I abide by Blackstone, to which I turn daily, and which I seek more and more indelibly to impress on my memory. Then I advance to the question of the *law* of the new decision: its conformity with standards of legal truth, — with the statute it interprets; the cases on which it reposes; the principles by which it is defended by the court; the law; the question of whether the case is law or not. This leads to a history of the point; a review of the adjudications; a comparison of the judgment and argument with the *criteria* of legal truth. More *thought*, — producing and improved by more writing, and more attention to last cases of English and our best reports, are wanting still. I seem to myself to think it is within my competence to be master of the law, as an administrative science. But let me always ask at the end of an investigation, can this law be reformed? How? why? why not? *Cui bono* the attempt?

A charm of the study of law is the sensation of advance, of certainty, of having apprehended, — or being in progression towards a complete apprehension *of a distinct department and body of knowledge*. How can this charm be found in other acquisitions? How can I hit on some other field or department of knowledge which I may hope to master; in which I can feel that I am making progress; the collateral and contemporaneous study of which may rest, refresh, and *liberalize* me, yet not leave mere transient impressions, phrases, tincture, — but a body of digested truths, and an improved understanding, and a superiority to others in useful attainment, giving snatches of time, minutes and parts of hours, to Cicero, Homer, Burke and Milton, to language and literature. I think I see in the politics of my own country, in the practical politics of my country, a department of thought and study, a field of advancement, which may divide my time, and enhance my pleasure and my improvement, with an efficacy of useful results equal to the law.

My experience in affairs will give interest to the study of the thing. It will assist the study, as well as give it interest. . . .

One hour of exclusive study a day, with these helps, might carry one very far, — so far at least, as to confer some of the sensations, and some of the enjoyments, attending considerable and connected acquisitions. Let me think of methods and aims.

1. The first great title in this science is the Constitution, — its meaning, its objects, the powers it gives, the powers it refuses, and the grand reasons why.

2. The second is the policy on which that Constitution ought to be administered, the powers it ought to put forth, the interests, domestic and foreign, to which it ought to attend. This is practical statesmanship, the statesmanship of the day. Now let us see how systematic and scientific acquisitions are to be achieved on these grand subjects.

1. It is to be done by composing a series of discourses, in the manner of lectures or speeches or arguments or essays, as the mood varies, on the particulars into which these titles expand themselves, &c. I am to write then, first, the History of the Formation and Adoption of the Constitution. . . .

Truth, truth is the sole end and aim. I shall read first with pen in hand, for collecting the matter, and not begin to compose till the general and main facts are tolerably familiar.

Mr. Choate took an active part in the Presidential canvass of 1844, earnestly advocating the election of Mr. Clay, and support of the Whig party, as the above extracts have shown his intention to do.

August 24, he writes in his journal: —

I have gone through a week of unusual labor, — not wholly unsatisfactorily to myself. I deliberately record my determination to make no more political speeches, and to take no more active part in the election or in practical politics. One exception I leave myself to make. But I do not mean to make it; I have earned the discharge, — *honesta missio petitur et concessa erit.* To my profession, *totis viribus*, I am now dedicated, — to my profession of the law and of advocacy, with as large and fair an accompaniment of manly and graceful studies as I can command. . . .

September 29th. — A little attention to things and persons and reputations about me, teaches that uncommon professional

exertions are necessary to recover business to live, and a trial or two teaches me that I can very zealously and very thoroughly and *con amore*, discuss any case. How well I can do so, compared with others, I shall not express an opinion on paper, — but if I live, all blockheads, which are shaken at certain mental peculiarities, shall know and feel a reasoner, a lawyer, and a man of business. In all this energy and passion I mean to say no more than that the utmost *possible pains-taking with every case* is perfectly indispensable, and fortunately not at all *irksome*. The case in hand demands, invites, to a most exact, prepared, and deep legal and rhetorical discourse. . . .

For the rest, I grow into knowledge of Homer and Tacitus and Juvenal, — and of the Rome of the age from Augustus to Trajan. . . .

The classical historians I do love. I read Tacitus daily. But this is for their language, for their pictures, for their poetical incident, the rhetorical expression, the artistical perfectness and beauty.

The history I would read is modern. I should go no farther back than Gibbon; should recall the general life, thoughts, action, of the Middle Age in him, and Hallam's two great works; and begin to study, to write, to deduce, to lay up, in the standard, particular histories of the great countries.

Let me begin, then, with a succinct display of the foreign politics of England in the reign of William. [*i. e.*, William III.]

He writes in this fragmentary journal, under the date of Boston, December 9, 1844: —

About to set off to Washington, there to close, in two months, forever my political life, and to begin my return to my profession, I am moved with a passion for planning a little, — what, in all probability, will not be performed, — or not performed without pretty essential variations and interruptions.

1. Some professional work must be done every day.

He has cases in the Supreme Court to prepare; but, in addition, he purposes also to read upon Evidence and Cowen's Phillipps.

2. In my Greek, Latin, and French readings, — Odyssey, Thucydides, Tacitus, Juvenal, and some orator or critic, — I

need make no change. So, too, Milton, Johnson, Burke, — *semper in manû — ut mos est.* . . .

3. The business of the session ought to engross, and shall, my chief attention. The Smithsonian Fund ought to be applied to a great library; and a report and speech in favor of such an appropriation are the least I owe so grand and judicious a destination of a noble gift. An edition of the laws, on the plan of last winter, is only next in dignity and importance. For the rest, — the reduction of postage, the matter of Texas, the tariff, will be quite likely, with the Supreme Court, to prevent time from hanging vacantly on my hands. *Sit mihi diligentia, sint vires, — sit denique et præcipue gratia!*

And now for details of execution.

I. Walk an hour before breakfast; morning paper; Johnson and Milton before breakfast. Add, if possible, with notes, an essay of Bacon also, or a paper of the Spectator, or a page of some other paper of Addison.

II. After, — 1. The regular preparation for the Senate, be it more or less. Let this displace, indeed, all else, before or after. 2. If that allows — (*a*) preparation of cases for courts. (*b*) if that allows — 1. Page in Cowen's Phillipps. 2. Then preparation for courts. 3. Then Senate, &c.

III. Letters and Session.

IV. Then — subject to claims of debate and of Court — Greek, Latin, French, *ut supra*, Burke, Taylor.

V. The cases to be prepared by, say 20th January; debate oftener than formerly; less preparation is really needful, yet seek one great occasion.

December 28, 1844, he writes: —

My readings have been pretty regular and almost systematic. Phillipps's Evidence, with notes, Johnson, the Tatler, the Whig Examiner, and Milton, in the morning. Some thoughts on the Smithsonian Fund, and one or two other Senatorial matters in the forenoon, and the Odyssey, Thucydides in Bloomfield, Hobbes and Arnold, Demosthenes for the Crown, Tacitus, Juvenal, and Horace *De Arte Poet.*, with Dacier and Hurd. For the rest, I have read Jeffrey's contributions to the Review, and have plunged into a pretty wide and most unsatisfactory course of inquiry concerning the Pelasgi, and the origin of Greek culture,

and the Greek mind. Upon this subject, let me set down a few thoughts.

Then follows a long and fine passage upon the history of Ancient Greece, and the value of a good work on that subject, written by a competent American.

To me, *cogitante sæpenumero* on what one such labor I may concentrate moments and efforts, else sure to be dissipated and unproductive, — this seems to be obviously my reserved task. It is large enough and various enough to employ all my leisure, stimulate all my faculties, cultivate all my powers and tastes; and it is seasonable and applicable in the actual condition of these States. . . . Let me slowly, surely begin. I seek political lessons for my country.

Mr. Choate's retirement from the Senate, at the end of the session of 1845, did not release him from occasional political efforts upon the platform, or from literary discourses, for which his services were always in great request.

In the summer of that year he delivered an address before the Law School at Cambridge, on the "Position and Functions of the American Bar, as an element of Conservatism in the State." It is a brilliant, scholarly, and wise production.

Choate's argument in the following January, in the United States Supreme Court, in the case of Rhode Island against Massachusetts, about the boundary line, is said to have been listened to with extreme delight, as almost a revelation of subtlety and beauty. But it is stated that not a fragment of it remains in any form. Yet Mr. Choate spent upon its preparation much time and labor.

Soon after, in March, 1846, occurred the first of the Tirrell trials, of which enough has already been said. There remains only a very imperfect newspaper sketch of Choate's argument in this case, which no doubt exhibited his power over a jury at its high-water mark. In the

Rhode Island and Massachusetts case, Choate was associated with Daniel Webster. In the Oliver Smith Will case, at Northampton, Massachusetts, in 1847, Choate led for the contestants against Webster, who prevailed, as he ought to have done. Both the great lawyers displayed wonderful ability, each according to the exigency of his cause.

Mr. Choate entered into the Presidential contest of 1848 with great enthusiasm, making a number of very brilliant and effective speeches. He was specially delighted with the election of General Taylor. About the same year, 1848, Mr. Choate was invited to accept a professorship in the Dane Law School of Harvard College, under very flattering auspices. His biographer is enabled to give the circumstances from a narrative furnished him by Chief-Justice Shaw, who evidently was the author of the project, and himself communicated the suggestion to Mr. Choate, of whom he writes as "a candidate offering powers of *surpassing* fitness." It was, in substance, that Mr. Choate should remove to Cambridge on assuming the duties of the professorship, and give up general practice, except an occasional law argument in the Supreme Court at Boston or Cambridge. But as a compensation, it was proposed so to distribute Mr. Choate's duties at the School as to enable him "to attend the Supreme Court of the United States, at Washington, during their whole term." Judge Shaw says: —

> The advantages to Mr. Choate seemed obvious. When it was previously known that he might be depended on to attend at the entire term of the Supreme Court, we supposed he would receive a retainer in a large proportion of the cases which would go up from New England, and in many important causes from all the other States. The effect of this practice upon the emoluments of his profession might be anticipated. . . . The extent to which such a practice, with such means, would soon add to the solid reputation of Mr. Choate, may easily be conceived,

especially by those who knew the strength of his intellectual power, and the keenness of his faculty for discrimination.

Judge Shaw thus concludes his narrative: —

Mr. Choate listened to these proposals and discussed them freely; he was apparently much pleased with the brilliant and somewhat attractive prospect presented to him by this overture. He did not immediately decline the offer, but proposed to take it into consideration. Some time after — perhaps a week — he informed me that he could not accede to the proposal. He did not state to me his reasons, or if he did, I do not recollect them.

The whole transaction, however, is specially interesting as showing conclusively the exalted opinion entertained of Mr. Choate's legal abilities by the great and stern "Chief," who, as the undiscerning thought, was sometimes impatient of his flowery orations, or impassioned appeals to the jury. Many reasons may be conjectured as dissuading Mr. Choate from accepting the invitation to the Law School. Possibly a disinclination to teaching, or to the proposed change of residence, — certainly, to the suggested absence from home and books for a great part of the year. But what a teacher he would have made! How persuasively, and with what golden-tongued eloquence, he would have guided young men toward "the gladsome light of jurisprudence!"

About the same time Mr. Choate declined a seat upon the bench of the Supreme Court, tendered him by Governor Briggs, although urged by some friends to accept, as a relief from professional labor. But if there were no other reason, he was not rich enough to take the place.

March, 1849, he delivered a lecture before the Mercantile Library Association, entitled "Thoughts on the New England Puritans." In the summer of that year he argued at Ipswich — with, it is said, "consummate skill and eloquence" — the Phillips Will case, involving a very large estate, in which he was entirely successful. Yet not a

fragment of his great argument remains. Let us record the names of counsel, for men so varied and great in ability are rarely associated. For the heirs-at-law, were W. H. Gardiner, Joel Parker, and Sidney Bartlett; for the executors, Rufus Choate, Benjamin R. Curtis, and Otis P. Lord.

All this time Mr. Choate kept up his private studies, as his journals show. He was still anxious to accomplish some literary labor, "which may do good when I am not known, and live when I shall have ceased to live, — a thoughtful and soothing and rich printed page." He mentions some single topics which he desired to treat: —

> The Greek orators before Lysias and Isocrates — Demosthenes, Æschines, Thucydides, the Odyssey, Tacitus, Juvenal, Pope — supply them at once; Rhetoric, the conservatism of the bar, my unpublished orations, the times, politics, reminiscences, — suggest others, — Cicero and Burke, Tiberius in Tacitus, and Suetonius, and De Quincy. But why enumerate? The literature of this century to the death of Scott or Moore, — so grand, rich, and passionate.

He recurs again to his project of a History of the Constitution of the United States, — a scheme which was also a favorite aspiration of Daniel Webster, who indeed once got so far as to commence the dictation of an outline of his plan. Mr. Choate also cherished the notion of writing the History of Ancient Greece, as we have seen by the extracts from his journal. His biographer says he probably did not relinquish that idea until the appearance of Grote's History. Later he hoped, at least, to prepare a volume of Essays, and even wrote a paper for Introduction to such a work, under the title of "Vacations," at the close of which he says he was "willing that others should know that the time which I have withheld from society, from the pursuit of wealth, from pleasure, and latterly from public affairs, has not been idle or misspent: *non otiosa vita; nec desidiosa occupatio.*" Such scraps and

fragments are all that remain of so much reading, thought, and aspiration. But the reason is given in an incident recorded by his biographer. He once told Judge Warren that he was going to write a book. "Ah," said the Judge, "What is it to be?" "Well," replied Mr. Choate, "I've got as far as the titlepage and a motto." "What are they?" "The subject is the Lawyer's Vacation; the motto — I've forgotten. But I shall show that the lawyer's vacation is the space between the questions put to a witness and the answer."

In 1850 Mr. Choate, strenuously impelled by the state of his health, permitted himself a long-desired trip to Europe, in company with an old friend and well-known lawyer, the Hon. Joseph Bell, who married a sister of Mrs. Choate. They were absent three months, visiting England, Belgium, France, a part of Germany, and Switzerland. His journal and letters show how much he enjoyed, in spite of ill health and fatigue. In travel he still kept up his studies: —

> This, lest taste should sleep and die, for which no compensations can pay. . . . For all the rest, I mean to give it heartily, variously, to what travel can teach, — men, opinions, places, — with great effort to be up to my real power of acquiring and imparting. This journey shall not leave me where it finds me: better, stronger, knowing more. One page of some law-book daily I shall read.

London, Paris, Waterloo, Geneva, Cambridge, by his associations, were as familiar to him almost as Cornhill and Court Square. And at Basle he writes, in lines he expected no eye would see till his own were closed in death: —

> Political life forever is ended. Henceforth the law and literature are all. I know it must be so, and I yield and I approve. Some memorial I would yield yet, rescued from the grave of a mere professional man, some wise or beautiful or interesting page, — something of utility to America, which I love more, every pulse that beats.

When, in 1850, Professor Webster was indicted for the murder of Dr. Parkman, it was generally supposed that Mr. Choate would defend him, and it is now known that he was invited and persistently urged to do so, and that very liberal fees were tendered him for the service. Franklin Dexter, a distinguished lawyer, who had himself defended John Francis Knapp at Salem twenty years before, visited Mr. Choate by appointment, and presented the merits of Professor Webster's case for several hours. Mr. Choate listened without interruption till Mr. Dexter had quite concluded, and then said, "Brother Dexter, how do you answer this question, — and this?" Mr. Dexter never answered those questions, but turned the conversation, and took his leave. From Judge Otis P. Lord's account of a conversation with Mr. Choate, it is very evident he would not have consented to defend Professor Webster except upon the theory of justifiable homicide in self-defence, or manslaughter occurring in sudden altercation. That defence might possibly have been successful.

Governor Clifford, who acted for a long time as prosecuting attorney and then as attorney-general, wrote that he believed "Mr. Choate at times accepted retainers in criminal causes from a conscientious conviction of duty, when the service to be performed was utterly repugnant and distasteful to him. . . . He felt that he was not at liberty, when pressed by the friends of parties accused of crime, to refuse his services to submit their defence to the proper tribunal," in accordance with his own theory of a proper defence. But he gladly accepted the appointment of attorney-general from Governor Clifford in 1853, because it would operate as his release from the disagreeable duty of accepting retainers in criminal causes. As attorney-general he was dignified and impressive, seeming ever to hold his fervid temperament and wonderful gift of impassioned eloquence in check, lest he should urge too hardly upon the accused. He would not press an indictment for

the sake of victory. He has left on record his own deep sense of his responsibility while attorney-general. It is the impression of one who improved every available opportunity of observing him in his official capacity, that he discharged its duties under a sense of self-constraint, and gladly put them aside, at the expiration of a single year, as if he were laying away the robe of an honorable servitude, and was himself again.

From 1834 to 1849 Mr. Choate's professional partner in business was B. F. Crowninshield, Esq. It is said there never was any division of earnings between them, nor any disagreement. In the latter year he took into partnership his son-in-law, Joseph M. Bell, Esq., who remained with him till his death, and is understood to have been of much service to him in systematizing his business, and raising his scale of professional charges, which had been at first ridiculously low. Mr. Choate was habitually careless of money and of pecuniary interests, although his many years of untiring labor for his clients were at last rewarded by a bare competency. Horace H. Day, his client in the rubber-cases, wrote: "I have employed many lawyers, but I have had but one lawyer who was wholly unselfish, and that was Rufus Choate." He once kept a book of office-accounts, in which he entered, as the first item, "office, debtor to one quart of oil, 37½ cents." Six months after, he made another entry. This was the last. The size of the fee received made no difference to him as to the amount of labor to be bestowed on a cause. He did his utmost in every case; he could not do more in any. He gave away and lent money to everybody who asked him, if he had money to give or lend. In his early years he often forgot to make charges, and to collect them when made. Under the fostering care of Mr. Bell, the average annual receipts of his office, from 1849 to 1859 inclusive, were nearly $18,000. In 1852 they were more than $20,000; in 1855 nearly

$21,000; in 1856 over $22,000. His largest fee was $2,500. During these eleven years his actual trials and arguments amounted to an annual average of nearly seventy, — some of them, of course, consuming many days.

It is pleasant to read that he always refused, and never accepted, any compensation for political speeches. He prided himself on his honor and purity in his relations to the State.

One of the best-known cases with which Mr. Choate was connected in his later years was Fairchild *vs.* Adams, an action for written and verbal slander by one clergyman against another. Mr. Choate defended successfully the Rev. Dr. Nehemiah Adams, who was his own pastor. In May, 1851, he argued the Methodist Church case in the Circuit Court of the United States in New York. March, 1852, he argued the great rubber-cases in the United States Court, in Trenton, New Jersey. In 1857 he exhibited all his wondrous resources of wit and wisdom, eloquence and pathos, in the Dalton Divorce case.

Reference has been heretofore made to the vast influence exerted by Daniel Webster over the career of Rufus Choate. Choate had — for reasons, some of which have been suggested — regarded Mr. Webster from his youth with affectionate veneration. He loved him with an almost filial devotion; and Mr. Webster seems to have reciprocated this warmth of feeling, loyally. Webster's was the masterful nature, and Mr. Choate appears, in political affairs, to have been quite content to follow his lead, but not with any servile devotion, still less with any selfish feeling. President Fillmore, indeed, is understood — in 1851, perhaps at the request of Mr. Webster, then Secretary of State — to have offered Mr. Choate the place made vacant by the death of Mr. Justice Woodbury of the United States Supreme Court, but it was declined. In the court-room Choate was too loyal to the interests of his

client to yield to Mr. Webster aught but the deference due to his age and great professional eminence. But in 1850, after the 7th of March Speech, Choate never faltered, but with unsurpassed chivalry followed the great chieftain forth into the dark storm of obloquy and reproach that burst upon him. He sought no exemption on the ground of his genuine retirement from political life, but voluntarily sought the battle where the blows fell fastest. November 26, 1850, he spoke at a Union Meeting in Faneuil Hall; and, February 22, 1851, on Washington's Birthday, he delivered an address, the scope of which was largely in support of the sentiment which Mr. Webster deemed it most important at that moment to inculcate. Again, in July of the same year, he addressed the Story Association, of the Dane Law School, in a similar strain, — though, of course, with the most careful observance of the proprieties of a scholastic anniversary. November 25, 1851, a great meeting was held in Faneuil Hall by the Massachusetts friends of Mr. Webster, to present him to the country as a candidate for the Presidency. No one who listened to Mr. Choate's great effort on that occasion can fail to remember it as a tender, glowing, yet high-reasoned, lofty, and wonderfully effective panegyric. Scarcely any man ever deserved such a tribute; perhaps no man beside Webster ever had such a eulogist.

Mr. Choate's labors in behalf of Mr. Webster in the last Whig National Convention, at Baltimore, in June, 1852, are well known, and his disappointment at the result was intense. But we have his own declaration, made after Mr. Webster's death, that he should vote for General Scott for the Presidency. He remained in the Whig party till its practical dissolution, but in 1856 supported Mr. Buchanan as the nominee of the Democratic party, — making a speech in Lowell in his behalf, under somewhat remarkable circumstances, as the candidate of a

national, in opposition to what he considered a sectional, party. This was his last strictly political effort, — although in 1858 he delivered a Fourth-of-July oration, before the Boston Young Men's Democratic Club, upon "American Nationality; its Nature, some of its Conditions, and some of its Ethics." Nationality and the Preservation of the Union was the key-note to all Rufus Choate said and did about politics in his later years. No explanation of any apparent inconsistency in his course is necessary, and his sharpest critics of that turbulent era would doubtless now concede his perfect integrity and high-minded devotion to what he deemed a righteous cause.

In August, 1852, Mr. Choate delivered an oration before the Phi Beta Kappa Society of the University of Vermont; also, at later periods, various lectures and addresses. The most important literary labor, however, was his eulogy on Daniel Webster at Dartmouth College in 1853, in which he has embodied all that he had seen or thought of his great master. After the criticism of thirty years, it remains a very noble production. In the same year Mr. Choate was a member of the Massachusetts Constitutional Convention. He made speeches on the Basis of Representation and on the Judiciary. The last is a fine specimen of practical and persuasive eloquence, well worthy of study.

It is not necessary to go farther with details. Such as Mr. Choate's life had been, it continued till, as was inevitable, his health broke down finally in the early summer of 1859. Determining to pass the season in England, he sailed from Boston, June 29, 1859; but, becoming worse, he left the ship at Halifax, where he died July 13, not yet sixty years old, worn out. In those last days he heard the books read that he loved best, — Shakespeare, Bacon, Macaulay, Gray, Luther, the Bible. He looked out upon the sea, where to his soul so much "Romance" hovered.

He said: "If a schooner or sloop goes by, don't disturb me; but if there is a square-rigged vessel, wake me up." His much-beloved son Rufus was with him, and received his last sigh. His remains were brought back to Boston, and buried at Mount Auburn.

Reference must be made, in a single line, to the many public meetings held in his honor, and the numerous beautiful, eloquent, and heartfelt tributes paid his worth and genius. They were offerings tendered, not to wealth or high station, but to a beautiful life, adorned by splendid powers, conscientiously employed.

In the preparation of this imperfect memorial, constant use has been made of that excellent book, "The Life of Rufus Choate," by Professor Samuel Gilman Brown. Edward G. Parker published a volume of "Reminiscences." Edwin P. Whipple has written much and discriminatingly of Choate. James T. Fields, Causten Browne, Irving Browne, George S. Boutwell, and others have written or delivered essays or lectures. The Albany Law Journal, in 1877 and 1878, published a series of interesting sketches, edited by Judge Neilson of Brooklyn. The bar is still full of stories of Choate's wit and quickness and eloquence, mostly spoiled in the telling.

Mr. Whipple says that in his youth Choate's "face almost realized the ideal of manly beauty." As most remember him, it was sad, strange, deeply lined, but lighted up by a great eye, susceptible to express all of triumph or of pathos.

As has been intimated more than once, Mr. Choate's great pleasure was in buying and reading books. His private library contained seven thousand, his law library three thousand volumes. About his unintelligible handwriting many jokes were made, and he made more than anybody else. To the young he was uniformly kind, and the Junior Bar found him always gracious and benignant. There were many who said, "He is the best senior coun-

sel that ever lived." At his home and with his family he was playful, gay, and affectionate. There seems no question that his temper was amiable. Above all things he was placable and magnanimous. Mr. Choate's wit, like his mind, was full of subtlety, delicacy, and unexpectedness. His witticisms must, of all men's, lose in repetition; to set them out in cold print is like breaking a butterfly; yet even so, some of them are delicious.

There is a portrait by Ames, at Dartmouth College, a bust by Thomas Ball, and an engraving from a photograph in Professor Brown's volume, — very like Mr. Choate in his last years.

By his marriage with Helen Olcott, March 29, 1825, Rufus Choate had children: (1.) Catherine Bell, born May 26, 1826; died May 24, 1830. (2.) An infant child, born Oct. 25, 1828; died Oct. 25, 1828. (3.) Helen Olcott, born May 2, 1830; married Joseph M. Bell, who died Sept. 10, 1868: they had no children. (4.) Sarah, born Dec. 15, 1831; died March 11, 1875. (5.) Rufus, born May 14, 1834; died Jan. 15, 1866. (6.) Miriam Foster, born Oct. 2, 1835; married Edward Ellerton Pratt: they have two children, — Helen Choate, who married Charles A. Prince, June, 1881, and Alice Ellerton, unmarried. (7.) Caroline, born Sept. 15, 1837; died Dec. 12, 1840. Mrs. Bell and Mrs. Pratt are the only surviving children of Mr. Choate. Charles A. and Helen Choate Prince have a child, Helen Choate, born April 6, 1882.

There remains no space, nor is there any necessity, to attempt an analysis of Mr. Choate's intellectual characteristics or attainments. Copious extracts have been made from his journals, so that the reader for himself can observe Choate's process for the building of a mind. From the time he learned his letters, till the hour of his death, he read the best books, and remembered an unusual portion of what he read. Thus he acquired remarkable knowledge, particularly in the direction of general

and political history. The classics he loved, and studied assiduously. Poetry, romance, biography had fascinations for him; so had moral and mental philosophy. Thus his mind became stored with useful facts and beautiful images, his style grew rich and exuberant. His fancy was vivid, and his imagination prolific. Nature had given him many gifts for an orator. He had an attractive presence, great personal magnetism, a voice deep, rich, pathetic, an eye wooing, winning, magical; above all, he had the indescribable, kindling, swaying temperament that is born, not made. His earliest efforts, on the rostrum and at the bar, proclaim his possession of these beautiful endowments; but his style tended to extravagance, was even bizarre. That was the turning-point of his career. Would he rest satisfied with nature's gifts? On the other hand, he sought the best models, to chasten as well as to enrich his style. He studied law as an exact science. If he did not become a learned lawyer, his acquisitions were at least competent for his purpose as a consummate advocate. He got to be a master of logic. Nobody was keener, for analysis or for discrimination. He exhausted the law of every case which he investigated. He argued to the jury just as the jury ought to be addressed, and he reasoned to the court in the highest and most effective manner. If, in his early manhood, anybody queried if he were a good lawyer, that doubt was laid at rest long before his death; and, upon the whole, it may be safely said that, for all sorts of cases, he was not alone the most brilliant advocate at the American Bar, but excelled by none in efficiency.

Through life Mr. Choate was governed by deep religious feeling and respect for things sacred; but he was never a member of any church. Like most men educated under Puritan influences, he never escaped entirely from the impressions of his youth.

He was admitted an honorary member of the New England Historic Genealogical Society, September 10, 1847.

Choate worked too hard and suffered the consequences in ill health, and positive pain and suffering; but it may be supposed his life was, on the whole, self-rewarding. He had ever before himself an ideal of excellence, — to make the most of himself, and, under all circumstances, to do the best possible. Can such a life be unhappy? He had, too, high consolations and noble pleasures ever at his command. Read that beautiful passage in which he himself has described the exhausted lawyer come home to his library: —

With a superhuman effort he opens his book, and in the twinkling of an eye he is looking into the full "orb of Homeric or Miltonic song;" or he stands in the crowd — breathless, yet swayed as forests or the sea by winds — hearing and to judge the Pleadings for the Crown; or the philosophy which soothed Cicero or Boëthius in their afflictions, in exile, prison, and the contemplations of death, breathes over his petty cares like the sweet South; or Pope or Horace laughs him into good humor; or he walks with Æneas or the Sibyl in the mid-light of the world of the laurelled dead; and the court-house is as completely forgotten as the dreams of a pre-Adamite life. Well may he prize that endeared charm, so effectual and safe, without which the brain had long ago been chilled by paralysis or set on fire of insanity!

With the regards of

E. E. Prince